THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.12129 of 1998

Between:
K.V.V.Srinivasa Rao
S/o Ramamohan Rao,
Vijayawada

... Petitioner

And:
Government of AP rep. by its Secretary,
College Education, Secretariat, Hyderabad
and others.

... Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 12129 OF 1998

ORAL ORDER :

The petitioner is aggrieved since the respondents Nos. 1 to 3 and 5 have not taken steps to regularize his services as a Junior Lecturer in the Commerce Department in the 4th respondent College and thereby disabled payment of regular scales of pay to him.

According to the petitioner, a Post Graduate in Commerce, there was an aided Junior Lecturer vacancy in the 4th respondent college. The 4th respondent invited applications from eligible and qualified candidates. Pursuant to a selection process he was selected for appointment as Junior Lecturer in the Commerce in the aided vacancy. He has been working as a part-time Junior Lecturer in Commerce in the aided post since 1st July 1992. Earlier he worked as a part-time lecturer in Commerce in another Junior College during 1990 to March 1992. There are three aided posts in the R-4 College and as on

the date of the institution of the writ petition only two lecturers were working in aided posts on regular scale of pay. The petitioner's grievance is that he has served continuously since his appointment in July 1992 as a part-time Junior Lecturer in Commerce but has not been granted a regular scale of pay. He is being paid only a consolidated amount. The petitioner claims to have made a number of representations to the 4th respondent requesting absorption in the available aided post, to no avail. In the circumstances the writ petition is filed seeking a direction to the respondents to regularize his services as a Junior Lecturer in Commerce.

The 5th respondent has filed a counter affidavit on behalf of the official respondents asserting that the petitioner was appointed by the 4th respondent's management without the prior permission of the answering respondent. There is a ban on regular appointments in view of the provisions of Act 2 of 1994 and even part time arrangements were prohibited w.e.f. 25.11.1993 in all institutions. The 2nd respondent had issued instructions to all managements of private aided junior colleges in the State by a communication dated 1.6.2000 not to make any appointments either part-time / *ad hoc* / daily wages / consolidated basis against aided vacancies of both teaching and non-teaching posts in all colleges after 25.11.1993. In G.O.Ms. No. 328 Education (CE.III) Department, dated 15.10.1997 the Government spelt out a scheme for regularization of certain categories of part time Junior Lecturers in private aided junior colleges in the State. Under this dispensation only those part-time junior lecturers who had put in a service of three academic years as on 10.07.1991 or 5 academic years as on 25.11.1993 as the case may be, and are continuing in service as on the date of issue of G.O.Ms. No. 328,

are eligible for regularization. The scheme further envisages that as 120 days are considered to be a reasonable number of working days for an academic year, only those part-time lecturers or part-time junior lecturers who had put in 360 days working days as on 30.07.1991 or 600 working days as on 25.11.1993 are eligible for the benefits of G.O.Ms.No. 328. According to the 5th respondent since the petitioner was not qualified in terms of G.O.Ms.No. 328, his case could not be considered for regularization. It is further pleaded that the orders in G.O.Ms.No. 328 are no longer extant as the period for the entitlement to the benefits under G.O.Ms.No. 328 has expired in view of the orders in G.O.Ms. No. 342 Education (CE.III) Department, dated 18.09.1998. It is also contended on behalf of these respondents that since the petitioner was appointed in violation of the ban orders, his case could not be considered for regularization in any event in addition to the fact that the 4th respondent had engaged the petitioner as a part-time Junior Lecturer without intimation to or prior permission of the competent authority. In the circumstances the 4th respondent alone is responsible for engaging or continuing the petitioner in service or for payment of his salaries and the State or any State agency has no obligation in this behalf, is the substratum of the case of the official respondents.

On behalf of the 4th respondent-Management a counter affidavit has been filed by the Secretary and Correspondent. The management asserts that the college selection committee on 1.7.1992 considered several applicants and the petitioner was appointed against an aided vacancy on 1.7.1992. The management admits that prior permission of the competent authority is required to fill up an aided vacancy and states that

on several occasions and consistently the Management has been representing to the official respondents to accord permission to fill up the part-time aided vacancy of a Junior Lecturer in Commerce but has received no response from these official respondents and therefore the Management resorted to the devise of appointing the petitioner as a part-time Junior Lecturer in what the Management describes as an aided vacancy.

The above contention of the Management is wholly misconceived. If, as admitted by the Management, an aided vacancy can be filled up only after prior permission of the competent authority and if in view of the injunctions of Art. 14 of the Constitution an aided vacancy can be filled only after following a transparent method of recruitment by affording equal opportunity to all eligible citizens, then and in such an event the Management could not have lawfully resorted to the process of constituting an in-house selection committee and identifying a chosen class of applicants for conferring on them the benefit of attending the selection process and rewarding one of such applicants with an order of appointment by designating the appointment as one made to a part-time vacancy and now choosing to term such appointment as being against an aided vacancy.

Such creative verbiage shall not be permitted to subvert the Constitutional scheme and the Rule of Law. What the management had done is clear and beyond disputation. As is apparent from the counter affidavit filed by the 5th respondent there was a ban on recruitment and therefore there could have been no permission accorded by the competent authority to fill up the available aided post in the 4th respondent institution. Since the management nevertheless wanted to pursue the

agenda of running the educational institution *de hors* the aided vacant post, had resorted to making an appointment as a part-time lecturer.

Neither does the petitioner assert nor do either the official respondents or the 4th respondent plead that the appointment of the petitioner as a part-time Junior Lecturer in 1992 was pursuant to a public and transparent process of recruitment, giving wide publicity to the existence of the vacancy and providing an opportunity to al qualified persons to apply. In the absence of any such pleading or demonstration it must be inferred that there was no such public process of recruitment. Articles 14 and 16 enjoin that all eligible persons should have an equal opportunity to aspire, apply and be considered for any public office. An aided vacancy is funded by the exchequer and therefore partakes the character of public employment. An aided vacancy in the above circumstances, cannot be filled up without following a public and transparent policy of recruitment which affords equal opportunity to all eligible persons. This has apparently not been done in the appointment of the petitioner as a part-time Junior Lecturer in 1992.

For reasons of pragmatism and expedition and to cater to a situation which was consequent to a prolonged subversion of the Constitution, the State had issued executive orders in G.O.Ms. No.328 to regularize initial irregular appointments which continue for a long period. The petitioner did not qualify for regularization into an aided vacancy even under this benign dispensation of the State. It is a settled public law principle that regularization cannot be a mode of recruitment. In ***Secretary, State of Karnataka and others v Umadevi and others*** ([1]) a Constitution Bench of the Supreme Court has clearly enunciated the principle that regularization of irregular

appointments cannot be directed by the judicial branch of the State. As G.O.Ms.No. 328 is inapplicable to the petitioner nor would permit the relief he seeks even during its currency and in view of the law declared in ***Umadevi*** (supra), no relief could be granted to the petitioner.

The learned Government Pleader for Higher Education has placed before this court today an order of the State Government in G.O.Ms. No. 35 Higher Education (CE II-1) Department, dated 27.03.2006 whereunder a general ban on filling up vacant aided posts in private aided junior or degree colleges and Polytechnics through direct recruitment has been imposed, except in respect of SC/ST backlog vacancies. According to the learned Government Pleader these orders are in currency and have been issued on account of the financial inability of the State to fund the ever increasing number of aided posts in private aided colleges and having regard to the fact that private aided institutions have mushroomed all over the State and the Government is unable to fund the grant-in-aid required for the large number of aided vacancies.

In view of the above orders no Mandamus can also be issued directing the official respondents to issue appropriate orders to notify the existing the vacancies in the 4th respondent College for direct recruitment.

In view of the aforesaid facts and circumstances no relief could be granted to the petitioner. It is however open to the petitioner to assail the validity of G.O.Ms. No. 35 Higher Education (CE.II-1) Department, dated 27.03.2006, if he is so desirous. The writ petition is accordingly dismissed. No order as to costs.

Dt: 08.08.2007 ----------

Pvsn/tsnr Justice G.Raghuram

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[1] (2006) 4 SCC 1